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via email: regs.comments@federalreserve.gov

December 19, 2011

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1433, Regulation D, Reserve Requirements of Depository
Institutions: Reserves Simplification and Private Sector Adjustment Factor

Docket No. R-1434, Regulation J, Collection of Checks and Other Items by Federal
Reserve Banks and Funds Transfers Through Fedwire: Elimination of "As-of
Adjustments" and Other Clarifications

Dear Ms. Johnson:

The Independent Community Bankers of America¹ (ICBA) welcomes the opportunity to comment on the Board of Governors of the Federal Reserve System (Board) proposals to amend Regulation D (Reserve Requirements for Depository Institutions) and Regulation J (Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers through Fedwire) to simplify the administration of reserve requirements for both depository institutions and the Federal Reserve.

Under the proposed changes, the Board would: create a common two-week maintenance period for all depository institutions; create a penalty-free band around reserve balance requirements in place of carryovers and routine penalty waivers; discontinue as-of adjustments related to deposit revisions and replace all other as-of

¹ The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold over \$1 trillion in assets, \$900 billion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

adjustments with direct compensation; and, eliminate the contractual clearing balance program.

We are also taking this comment opportunity to request that the Board evaluate whether the internal transfer limits contained in Section 204.2 (d)(2) of Regulation D are still needed to conduct monetary policy.

ICBA Comments

ICBA recognizes that reserve requirements are critical for the conduct of monetary policy and that the administration of reserves is very complex, particularly in times of economic uncertainty. ICBA members found the Board's informal outreach during the pre-rulemaking process valuable in fostering understanding and in soliciting industry input.

We applaud the Board for its ongoing study of the impact of payment of interest on reserves on depository institutions and the Federal Reserve System and whether regulatory action is warranted. ICBA strongly urges the Board to continue this analysis and outreach to solicit industry input as it contemplates potential modifications. In the event there is ever a reversal of the policy decision to pay interest on reserves, or there are other material economic events or policies affecting reserve requirements, it is imperative for the Board to thoroughly analyze the associated implications for depository institutions, including correspondents, and to solicit both informal and formal industry input before issuing a final rule.

In summary, ICBA:

- supports establishing a uniform two-week maintenance period for satisfying reserve balance requirements and the proposed implementation no earlier than the third quarter in 2012;
- supports eliminating carryovers and routine penalty waivers and establishing a penalty-free band;
- supports replacing as-of adjustments with direct compensation and using the Federal funds rate to calculate the direct compensation;
- supports eliminating the contractual clearing balance program;
- urges the Board to develop a formal outreach and sunset implementation plan for clearing balance program participants;
- recommends delaying the clearing balance program sunset date to at least 90 days from the announcement of the final rule;
- urges the Board to be mindful that certain policies may have unintended consequences for correspondent relationships and to take appropriate steps to eliminate or lessen the impact of these changes;
- encourages the Board to evaluate ways of providing information so that correspondent banks can easily post the transaction to the

- appropriate respondent bank;
- supports changes to Regulation J to remove references to as-of adjustments;
- supports updating Regulation J to reflect today's paper check processing environment;
- supports clarifications eliminating the uncertainty regarding the laws and regulations governing remittance transfers; and
- encourages the Board to evaluate whether the limit on internal transfers from savings to transaction accounts is still needed to conduct monetary policy.

Please reference our detailed comments below for additional information.

Common Two-Week Maintenance Period

Currently, depository institutions satisfy their reserve balance requirements over a one- or two-week maintenance period. Depository institutions submit deposit reports based on frequencies assigned by the Board using the amount of their reservable liabilities over the preceding year. The four reporting categories are weekly reporters, quarterly reporters, annual reporters and non-reporters. Weekly reporters have a two-week maintenance period and quarterly reporters have a one-week maintenance period. Institutions that have a zero reserve requirement either report annually or are not required to report at all. Some depository institutions switch reporting frequencies from one year to another consistent with changes to their reservable liabilities.

The Board is proposing to establish a uniform two-week maintenance period for all depository institutions. The Board believes that a uniform period would reduce administrative and operational costs for the Federal Reserve and depository institutions, particularly for those institutions that change maintenance periods when deposit reporting requirements change. The proposed modification would not require depository institutions to change their deposit data reporting frequency.

ICBA is supportive of establishing a uniform two-week maintenance period for satisfying reserve balance requirements since the change would not introduce new regulatory burden by altering deposit data reporting frequency. ICBA supports the Board's anticipated implementation no earlier than the third quarter of 2012 to provide those institutions sufficient time to make any system changes deemed appropriate.,

Penalty-Free Band

Regulation D currently permits depository institutions to carry over a deficiency or an excess reserve balance to the subsequent maintenance period. Reserve Banks also have the authority to assess penalty fees against institutions failing to satisfy their reserve requirements. There are few instances in which institutions actually pay penalties due to

Reserve Banks exercising their authority to waive most penalties. The subsequent maintenance period must be completed to establish whether a carryover provision was used to satisfy reserve requirements. Thereby, the payment of interest on reserves is delayed by at least one maintenance period.

The proposed modification would eliminate the carryovers and routine penalty waivers and establish a penalty-free band equal to an institution's reserve balance requirement plus or minus the greater of \$50,000 or 10 percent of an institution's reserve balance requirement. Also, under the proposal, the penalty-free band for correspondents would be equal to the greater of \$50,000 or 10 percent of the aggregate reserve balance requirement of the correspondent and all of its respondents.

ICBA supports the Board's proposal to eliminate carryovers and routine penalty waivers and to establish a penalty-free band no later than the third quarter of 2012. The proposed band width is an appropriate starting point and we encourage the Board to monitor its effectiveness in accomplishing the Board's objectives and to propose changes as appropriate.

Replacing As-of Adjustments with Direct Compensation

Under the current system, as-of adjustments are used to correct the amount of an institution's level of balances maintained due to deposit reporting errors. The Board is proposing to eliminate the use of as-of adjustments for deposit revisions since the payment of interest on reserves reduces the opportunity cost of holding balances to satisfy reserve requirements.

The Board is also proposing to replace as-of adjustments relating to the correction of transaction errors, float recovery, and reserve deficiency penalties with direct compensation (either a debit or credit) to an institution's reserve account. The payment or charge would be based on the Federal funds rate. The proposed changes, implemented no earlier than the first quarter of 2012, necessitate amendments to Regulation D as well as Regulation J.

ICBA supports the proposed changes and believes it is a positive step in eliminating administrative burden for the Reserve Banks and community banks. Using the Federal funds rate is appropriate for the calculation of direct compensation since applicable provisions of Regulation J and Article 4-A of the Uniform Commercial Code both calculate any interest due using the Federal funds rate. It is important to maintain consistency whenever possible and ICBA believes that this is such an instance.

Elimination of Contractual Clearing Balance Program

The Federal Reserve's contractual clearing balance program allows depository institutions to maintain balances in excess of reserve requirements to facilitate the clearing of payments and reduce the risks of account overdrafts. Institutions receive

earnings credits to offset the cost of Federal Reserve priced services in lieu of explicit interest payments. The Board is proposing to eliminate the clearing balance program to provide institutions the opportunity to earn a higher rate of return by investing these balances as excess balances and receiving interest as well as to improve the Federal Reserve's ability to conduct monetary policy. The program would be eliminated no earlier than the first quarter of 2012.

ICBA supports the Board's proposal to eliminate the contractual clearing balance program, however, we urge the Board to develop a formal outreach and sunset implementation plan to apprise program participants of the impending sunset date, the process for exiting the program prior to and by the sunset date, the expiration date for any earnings credits and the implications of explicit payment for Federal Reserve priced services. We recommend delaying the sunset date to at least 90 days from the announcement of the final rule to provide institutions sufficient time to make the associated system and operational changes.

Correspondent Banks

Thousands of community banks maintain reserve and clearing balances at correspondent banks. *ICBA urges the Board to be mindful that certain policies may have unintended consequences for these relationships and to take appropriate steps to eliminate or lessen the impact of these changes for correspondent banks. We also encourage the Board to evaluate ways of providing activity information so that correspondent banks can allocate easily the transaction to the appropriate respondent institution.*

Other Regulation J Clarifications

In addition to the proposed Regulation J amendments to eliminate references to as-of adjustments, the Board is also proposing amendments regarding check presentments and Fedwire Funds transfers, effective 30 days after the issuance of a final rule.

The first proposed amendment would clarify where a check or other item is deemed to be accepted when sent to a Reserve Bank. This clarification addresses today's paper check processing environment where paper checks are deposited at another Reserve Bank other than the Administrative Reserve Bank. Under the proposed clarification, by stating that the Administrative Reserve Bank is deemed to have accepted deposit of the item even if the item goes to another Reserve Bank. *ICBA strongly supports this proposed change which updates Regulation J to reflect today's processing environment.*

The second proposed amendment would clarify that Regulation J would continue to apply to Fedwire funds transfers also meeting the definition of remittance transfer under the recently-revised Electronic Fund Transfer Act (EFTA) unless there is an inconsistency between Regulation J and Section 919 of the EFTA in which case Section

919 would prevail. *ICBA fully supports eliminating the uncertainty regarding the laws and regulations governing remittance transfers.*

Limitation on Savings Account Transfers

ICBA strongly encourages the Board to evaluate whether Section 204.2(d)(2) of Regulation D which limits internal transfers from savings accounts to transaction accounts to six per month is still needed for the effective conduct of monetary policy. ICBA believes that it is now appropriate for the Board to perform this analysis in lieu of consumer and regulator expectations that the ability to execute internal account-to-account transfers 24/7 with online and mobile banking applications is readily available.

Consumers find this limitation quite confusing and annoying, particularly when they are using online and mobile banking applications to actively manage their accounts to prevent overdrafts. Moreover, federal banking regulators deem account-to-account transfers to be a better alternative to automated overdraft programs and are encouraging institutions to promote this alternative to their customers.

With this limitation in place, depository institutions have the burden of conveying the limitation to customers, monitoring transfer activity, contacting customers who exceed the monthly limit and converting savings accounts to checking accounts for those customers continuing to violate the limit. This burden has increased exponentially with the popularity of online and mobile banking.

Removal of this limitation would provide improved and flexible funds access to consumers and compliance relief for depository institutions.

Again, ICBA appreciates the opportunity to comment on the proposed amendments to Regulations D and J. If you have any questions about this letter, please do not hesitate to contact me at 202-821-4414 or viveca.ware@icba.org.

Sincerely,

/s/

Viveca Y. Ware
Senior Vice President, Regulatory Policy